

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JOHN C. PHELAN,  
Plaintiff,

v.

LIFEWAY FOODS, INC.,  
Defendant.

Case No. 12-cv-01309-JST

**ORDER RE: VOLUNTARY DISMISSAL**

Re: Dkt. No. 49

Before the Court is Plaintiff John Phelan's "Notice" of Voluntary Dismissal Without Prejudice, Dkt. No. 49 (March 19, 2013).

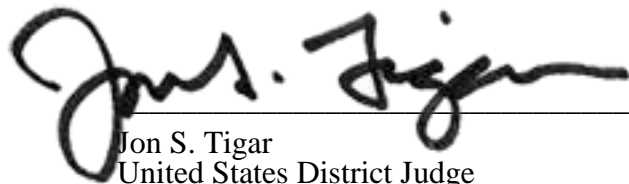
Federal Rule of Civil Procedure 41(a)(1)(A)(i) permits Plaintiff to voluntarily dismiss his case without an order of this Court only if the notice is filed "before the opposing party serves either an answer or a motion for summary judgment." Defendant's Answer was filed on January 11, 2013. That rule, cited in Plaintiff's "Notice," therefore does not apply.

Rule 41(a)(1)(A)(ii) provides Plaintiff the alternative of filing a stipulation of dismissal signed by all parties who have appeared. Plaintiff's filing is signed only by his counsel. That rule also does not apply.

Consequently, Plaintiff's "Notice" of voluntary dismissal had no effect and Plaintiff's claims were not dismissed. Good cause appearing, the Court hereby vacates the case management conference currently scheduled for Wednesday, March 20, 2013. The Court will hold a case management conference in this matter on May 1, 2013, at 2:00 p.m.

**IT IS SO ORDERED.**

Dated: March 19, 2013



Jon S. Tigar  
United States District Judge